IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 327 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI GANESHBHAI CHAUDHARY
Versus
NEUTRAL GLASS & ALIED INDUSTIRED PVT LTD

Appearance:
DR MUKUL SINHA for Petitioner
MR KS NANAVATI for NANAVATI ASSOCIATES for Resp. No. 1
MR RC KODEKAR, APP for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 09/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Revision Application under Section 401 of the Criminal Procedure Code, the petitioner, an ex-employee of the respondent-Company, has challenged the order passed by the learned JMFC, Surat under Section 630 of the Companies Act, 1956 (hereinafter referred to as "the Companies Act"), as confirmed by the learned Sessions Judge, Surat, requiring the petitioner to vacate the quarters allotted by the respondent Company upon dismissal of the petitioner from service. The petitioner has also challenged the constitutional validity of section 630 of the Companies Act on various grounds.

2. The facts leading to filing of the petition, briefly stated, are as under :-

The petitioner was employed as a fitter by the respondent-Company on 2.5.1990. The Company passed order dated 28.1.1997 dismissing the petitioner from service after holding a departmental inquiry. Thereafter the Company also moved the Court of the learned JMFC, Surat under Section 630 of the Companies Act on the ground that the petitioner was allotted Company quarters for residential purpose during his employment with the Company and upon dismissal, the petitioner was required to vacate the quarters which he was wrongfully withholding. The petitioner's defence in the said proceedings was that during pendency of the complaint, the petitioner had already moved the appropriate Government for referring the industrial dispute challenging his dismissal and that the Government had made such a reference on 2.4.1947. Since the petitioner had right to challenge the order of dismissal, during pendency of such adjudication proceedings before the Labour Court, the petitioner was entitled to occupy the quarters and, therefore, the petitioner was not withholding the possession of the quarters wrongfully. Ultimately by order dated 27.7.1998 (Annexure III to the petition), the learned Magistrate held that since the petitioner was dismissed from service, he had no right to continue to occupy the quarters and, therefore, the petitioner was wrongfully withholding possession of the property of the Company inspite of service of notice by the Company to vacate the quarters. The learned Magistrate gave a finding that the quarter was allotted to the petitioner during his employment with the Company and since the petitioner was dismissed from service, he is liable to vacate the quarters. The learned Magistrate passed eviction order and levied a fine of Rs.1000/-. The learned Magistrate directed the petitioner to vacate the quarters and hand over possession thereof to the

Company by 14.8.1998.

Aggrieved by the above order, the petitioner moved the Sessions Court which, however, dismissed Criminal Appeal No. 13/98 on the same ground. The petitioner, therefore, filed the present Revision Application.

3. During pendency of this application before the learned Single Judge, the petitioner obtained permission of the Court to amend the petition for challenging the constitutional validity of the provisions of Section 630 of the Companies Act which amendment was granted. That is how the petitioner has challenged the vires of the aforesaid provisions before us.

We have heard Dr Mukul Sinha, learned counsel for the petitioner and Mr KS Nanavati, learned counsel for the respondent at length.

4. Before going to the merits of the case, we may first deal with the contention urged by the learned counsel for the petitioner that the provisions of Section 630 of the Act do not cover workman and that they are only applicable to officers and employees of the Company other than workmen.

"630. Penalty for wrongful withholding of property.- (1) If any office or employee of a company -

(a) wrongfully obtains possession of any property of a Company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act;

he shall, on the complaint of the Company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(2) The Court trying the offence may also order such office or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years."

It is submitted that Section 630 of the Companies Act specifically provides that if any officer or employee of the Company wrongfully withholds the property of the Company, he shall be punished with fine which may extend to one thousand rupees, but the section deliberately does not refer to "workmen" even though the legislature itself has made reference to workmen in certain other provisions of the Act like Section 529(3)(a) and Section 529A of the Act.

We are not inclined to accept this contention for the simple reason that the term "employee" is a wider generic term which would include workman also. In fact, the provisions of Section 529(3)(a) defines "workmen" in the following terms :-

> "(a) "workmen", in relation to a Company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947)"

The above definition itself indicates that the legislature has treated workmen as one of the categories of employees. There is nothing in the provisions of Section 630 of the Companies Act or any other provision which would indicate that the legislature intended to exclude workmen from the scope of Section 630 of the Companies Act. The object of Section 630 is to provide speedy remedy for enabling the Company to obtain possession of its property where it is wrongfully obtained or wrongfully withheld by any officer or employee of the Company. There will be no rationale in excluding workmen from the scope of Section 630 of the Companies Act.

5. Dr Sinha's other contentions are as under :-

5.1 When the services of an employee are terminated or when he is dismissed from service, he has the right to challenge such termination/dismissal before an appropriate forum like the Labour Court under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"). If the petitioner is able to satisfy the Labour Court that the termination/dismissal was illegal, the declaration would relate back to the date of termination/dismissal and in such an eventuality it can never be contended that the petitioner's possession of the quarters was illegal during pendency of the reference before the Labour Court.

It is further submitted that during pendency of the reference before the Labour Court, the employee has a right to move the Court for interim relief and that the employer cannot be permitted to resort to Section 630 of the Companies Act without the employee getting an opportunity to obtain appropriate order from the Labour Court.

5.2 It is submitted that as held by the Apex Court in the case of Premier Automobiles and other cases, the Industrial Disputes Act is a special Act creating rights and remedies which were not provided earlier by the general law and that for enforcement of such rights under the ID Act, the remedies and the machinery are available only under the ID Act and that all the disputes between the employer and the workmen would be covered by the ID Act. The ID Act being a special Act, the same would prevail over the provisions of Section 630 of the Companies Act which is a general law for the Companies and which does not provide for any settlement of disputes between the employer and employees or other workmen.

5.3 It is submitted that even otherwise if two parallel Courts are permitted to conduct two parallel proceedings independent of each other, there would be a possibility of conflict of decisions. On the one hand the Labour Court may say that the workman is entitled to continue in service and also entitled to continue in possession of the quarters and on the other hand, the Criminal Court may pass an order against the workman convicting him for illegal possession and requiring him to vacate the quarters. It is submitted that in order to save such an interpretation, it must be held that the provisions of Section 630 of the Companies Act must yield to the provisions of the ID Act.

5.4 It is contended that even if the employee is dismissed from service, once he raises an industrial dispute, the provisions of Section 33(1) of the ID Act would come into force, and thereupon the employer would be prohibited from altering the conditions of service which would also include the petitioner's occupation of the quarters allotted by the Company and, therefore, during pendency of the reference, as a matter of right the petitioner would be entitled to continue to occupy the quarters and, therefore also it cannot be said that the occupation of the quarters in question was wrongful.

6. On the other hand, Mr Nanavati for the respondent Company has submitted as under :-

6.1 Allotment of quarters in question was in view of the petitioner's employment with the Company and upon the employment coming to an end, the petitioner ceased to have any right to occupy the Company's quarters. The provisions of Section 33 of the ID Act do not contemplate that a workman whose services have come to an end. Once the relationship of employer and employee came to an end upon dismissal of the petitioner from service, the petitioner ceased to have any right whatsoever and consequently the petitioner also did not have any right to occupy the quarters.

6.2 On the question of alleged inconsistency between the ID Act and the Companies Act, it is submitted that Section 630 provides for speedy remedy to the Company and there is no inconsistency as the Criminal Court would not be in a position to take any decision contrary to the decision of the Labour Court provided there is any such decision of the Labour Court or there is any other order of the Labour on the question of status of the petitioner as a workman and about continuance of the relationship of employer and employee between the parties.

6.3 On the question of vires, the learned counsel for the respondent has submitted that the section is neither discriminatory nor constitutionally invalid, as per the decision of this Court in Petlad Bulakhidas Mills Co. Ltd. Vs. State of Gujarat, (1999) 1 LLJ 211 wherein this Court had an occasion to consider the challenge to the constitutional validity of Section 630 of the Companies Act and all the challenges including the challenge on the ground of legislative competency were negatived by this Court.

7. Having heard the learned counsel for the parties and having considered the decision of a Division Bench of this Court in Petlad Bulakhidas Mills Co. Ltd. (Supra), we are not in a position to hold that the provisions of Section 630 of the Companies Act suffer from the vice of any constitutional infirmity. The Division Bench of this Court has already held that the law in question was within the legislative competence. Even the challenge to the constitutional validity of Section 630 of the Companies Act on the ground that they are discriminatory or that they deprive the right to life under Article 21 of the Constitution was also negatived.

8. Dr Sinha, however, strenuously urged that the question of two conflicting remedies being on the statute book was not considered by the Division Bench and that, therefore, the said question is required to be examined.

We do not find any substance in the contention urged by Dr Sinha for the petitioner. We do not find any conflict between the powers of the Labour Court under the ID Act and the powers of the Criminal Court under Section 630 of the Companies Act. When a workman is dismissed from service, he has the remedy of challenging such dismissal before the Labour Court by getting a reference made under Section 10 of the ID Act. So long as the Labour Court hearing such reference does not give any declaration that the dismissal was illegal or so long as the Labour Court does not pass any other order staying the operation or any further implementation of the order of dismissal (assuming that the Labour Court has any such power), the order of dismissal would remain in force and the Criminal Court hearing the complaint under Section 630 of the Companies Act has to consider the situation in light of the order of dismissal/termination of service. Mere pendency of the reference before the Labour Court cannot and does not deprive the Criminal Court of its powers under Section 630 of the Companies Act. Hence, we do not find any conflict between the provisions of the ID Act and Section 630 of the Companies Act which are both Central legislations.

9. Coming to the contention of Dr Sinha that otherwise also, the petitioner's continued retention of the quarters could not be said to be wrongful in view of the provisions of section 33(1) of the ID Act, we find that the argument is misconceived. The said provisions intend to prohibit the employer from altering the conditions of service of workmen who have already raised an industrial dispute with respect to some other conditions of their service in existence. If workmen of a unit have raised an industrial dispute about wage revision, the employer cannot be permitted to nullify the reference by terminating the services of the workmen without obtaining permission of the concerned body before whom the dispute about wage revision is pending. It is in order to save the workman from this kind of retaliation that the legislature has enacted Section 33(1) of the Act providing that during pendency of any conciliation proceeding before a conciliation officer or a Board of any proceeding before an arbitrator or a Labour or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings or for any misconduct connected with the dispute, discharge or

punish, whether by dismissal or otherwise, any workman concerned with such dispute save with the express permission in writing of the authority before which the proceeding is pending.

The above provisions cannot be applied in the case like the present one where there was no pending industrial dispute when the employee was dismissed from service. Upon such dismissal, all the logical consequences would follow including the stoppage of salary and all other benefits which go with the employment. The employee would, therefore, also lose the right to occupy the quarters allotted to him during his employment.

In view of the above discussion, we find no conflic between the provisions of Section 33 of the ID Act and the provisions of Section 630 of the Companies Act.

10. It is clarified that the above observations on the question of scope of Section 33 of the ID Act do not have any bearing on the question of right (if any) of the workman to pray for appropriate interim order or interim relief before the Labour Court in a pending reference.

11. In view of the above discussion, we do not find any merit in any challenge to the constitutional validity of Section 630 of the Companies Act.

12. In the facts of the instant case also, it is apparent that after the order of dismissal was passed in January, 1997 and after the employer filed the complaint under Section 630 of the Companies Act on 5.3.1997, the consequential order of eviction of quarters came to be passed by the learned Magistrate on 27.7.1998 on which date the order of dismissal was in full force and, therefore, the learned Magistrate was justified in giving a finding that in view of the order of dismissal, the petitioner had no right to continue to occupy the quarters and that such continued occupation of the quarters even after receiving the notice of eviction from the respondent-employer was sufficient to bring the case within the scope of Section 630 of the Companies Act.

13. Both the Courts have given the finding that the petitioner was allotted quarters in question by the respondent-Company during his employment and that upon dismissal from service, the petitioner ceased to have any right to occupy the quarters in question and the continued occupation of the quarters from the date of the

dismissal order and more particularly from the date of service of eviction notice by the respondent Company amounted to the wrongful withholding of the property of the respondent-Company. We would like to note that after the petitioner was dismissed from service in January, 1997, the respondent-Company had moved the learned Magistrate under section 630 of the Companies Act on 5.3.1997 and the proceedings came to be concluded by the learned Magistrate only in July, 1998 during which period the matter was already referred to the Labour Court as far back as on 2.4.1997. Even so, for a period of about 15 months, although the petitioner had the opportunity, he did not get any interim relief from the Labour Court (assuming that the Labour Court could have granted such interim relief). The learned Magistrate was, therefore, not bound to await the disposal of the reference by the Labour Court in which the petitioner has challenged his dismissal from service.

14. In view of the above discussion, we find no merit in this revision application and dismiss the same.

Rule is discharged. Ad-interim relief granted earlier is vacated. In the facts and circumstances of the case, there shall be no order as to costs.

15. At this stage, the learned counsel for the petitioner prays for stay of operation of this order and in the alternative prays that the ad-interim relief granted earlier may be continued for some time in order to enable the petitioner to have further recourse in accordance with law.

We are not inclined to stay the operation of this order, but in the facts and circumstances of the case, we direct that the respondent shall not take any coercive action or enforce the order passed by the learned Magistrate under Section 630 of the Companies Act as confirmed by the Sessions Court till 31.12.2000.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

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